



NCN: [2023] UKFTT 1058 (GRC)  
Case Reference: EA-2023-0366-GDPR

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Before**

**TRIBUNAL JUDGE BUCKLEY**

**Between**

**YOU JAY LU**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**JUDGE BUCKLEY**

**Sitting in Chambers  
on 11 December 2023**

**DECISION**

1. The appeal is struck out.

**REASONS**

2. Although this appeal has been given a ‘GDPR’ case number, that is an administrative error because it is an appeal brought in relation to a freedom of information request.
3. The Appellant complained to the Commissioner on 12 July 2023 about the refusal of a public authority to respond to a freedom of information request made on 10 April

2023 on the basis that the request was vexatious under section 14 of the Freedom of Information Act 2000 (FOIA).

4. By letter dated 20 July 2023 the Commissioner dismissed the Appellant’s complaint under section 50(2)(c) FOIA, which provides:

**“50 Application for decision by Commissioner.**

(1) Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.

(2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him—

...

(c) that the application is frivolous or vexatious, ...

...”

5. The Commissioner has therefore not served a decision notice on the Appellant. The tribunal only has jurisdiction to consider an appeal where a decision notice has been served (see section 57 FOIA).
6. In the response to the application to strike out the appeal, the Appellant argues that the letter dated 20 July 2023 is a decision which must therefore give rise to a right of appeal to the tribunal. It is argued that if there is a decision which can be challenged by judicial review there must be a decision under FOIA.
7. Under section 50(1) a person may apply to the Commissioner for ‘a decision whether... a request for information... has been dealt with in accordance with the requirements of Part 1’.
8. That is the relevant decision for the purposes of section 50. It is a decision as to whether a request for information has been dealt with in accordance with the requirements of part 1. I shall refer to a decision on whether a request for information has been dealt with in accordance with the requirements of Part 1 as a ‘Decision’.
9. The Commissioner clearly has to make many decisions in the course of his role, not all of which are decisions on whether a request for information has been dealt with in accordance with the requirements of Part 1. These other decisions made by the Commissioner are not ‘Decisions’ within section 50. He does not have to serve notice of those decisions to the complainant and the public authority under section 50(3)(b). Those other decisions may be susceptible to Judicial Review, but they cannot be appealed to the First-tier Tribunal.
10. Under section 50(2) the Commissioner ‘shall’ make a Decision if he has received an application under section 50 unless certain circumstances exist, which are set out in section 50(2). So, for example, if there has been undue delay in making the application, the Commissioner does not have to make a Decision. Similarly, if the application is frivolous or vexatious, the Commissioner does not have to make a Decision.

11. Section 50(2) sets out what the Commissioner has to do in practice in response to an application. If the Commissioner is not going to make a Decision, he has to notify the complainant and tell him the grounds for not doing so. If he is going to make a Decision, he has to serve notice of his Decision (referred to as a 'decision notice') on the complainant and the public authority.
12. In the Appellant's case, the Commissioner decided that the application was frivolous or vexatious and that he did not need to make a Decision. In accordance with section 50(3)(a) he notified the Appellant that he had not made a Decision as a result of the application and of his grounds for not doing so.
13. As he had not made a Decision, he did not need to serve a decision notice under section 50(3)(b). Without a Decision and, more specifically, without a decision notice, there is no right to appeal to the First-tier Tribunal (section 57 FOIA).
14. In the alternative the Appellant argues that the Commissioner is abusing his discretion by refusing to issue a Decision Notice, thus blocking the Appellant from the tribunal. The Appellant submits that section 58 should override section 57 where there is an abuse of discretion by the Commissioner.
15. Section 58 concerns the tribunals powers "on an appeal under section 57". It cannot be used to circumvent section 57.
16. In conclusion, the tribunal only has jurisdiction to consider an appeal where a decision notice has been served. No decision notice has been served. There is therefore no jurisdiction to consider this appeal and it must be struck out.
17. It is not appropriate to exercise the tribunal's power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings, given the costs regime applicable in judicial review proceedings.
18. On that basis the appeal is struck out under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Signed Sophie Buckley

Judge of the First-tier Tribunal  
Date: 18 December 2023